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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rappahannock Rehabilitation Facility, Inc.
File: B-222961.3
Date: September 10, 1986

DIGEST

General Accounting Office will not review a determination by an executive agency not to purchase particular services from workshops designated by the Committee for Purchase from the Blind and Other Severely Handicapped pursuant to the Wagner-O'Day Act instead of performing them in-house, since the act requires such purchase only if the agency otherwise would procure the services from another commercial source.

DECISION

Rappahannock Rehabilitation Facility, Inc., protests the determination by the Department of the Navy that the United States Marine Corps can perform custodial services in 31 family housing units and buildings at the Marine Corps Development and Education Command in Quantico, Virginia, at a lower cost than can Rappahannock, and therefore to retain performance of these services in-house. The services had been listed by the Committee for Purchase from the Blind and Other Severely Handicapped for exclusive procurement from designated workshops such as Rappahannock. We dismiss the protest.

BACKGROUND

The Committee for Purchase from the Blind and Other Severely Handicapped was created by the Wagner-O'Day Act, 41 U.S.C. §§ 46 48 (1982), which is implemented by 41 C.F.R. part 51 and the Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 8.7 (FAC 84-16, May 30, 1986). The Presidentially-appointed Committee of 15 members representing government agencies and concerned private citizens directs the procurement of selected commodities and services by the federal government to qualified workshops serving blind and other severely handicapped individuals, with the objective of increasing the employment opportunities for these individuals.

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The Committee establishes and publishes in the Federal Register a "procurement list" of commodities and services, produced or provided by any qualified nonprofit agency for the blind or severely handicapped, that the Committee determines are suitable for procurement by the government pursuant to the act. The act requires the government to purchase the supplies or services on the procurement list from qualified workshops at fair market prices established by the Committee, if they are available during the period required. Rappahannock is a qualified, sheltered workshop for the severely handicapped represented by the National Industries for the Severely Handicapped (NISH), one of the two nonprofit agencies designated by the Committee to assist in the administration of the act.

As part of the Navy's program to support the goals of the act, the Committee, through its designee, NISH, was provided with a list of commercial activities that the government anticipated reviewing pursuant to Office of Management and Budget (OMB) circular A-76 for purposes of deciding whether it would be less expensive to contract for the services than to perform them in-house. From that list of services, NISH selected ones that it believed its workshops could provide, including the custodial services at Quantico, at issue here.

NISH then was provided a copy of the solicitation that evidently would have been issued to secure the services through a competitive procurement. The solicitation then apparently was furnished to Rappahannock, which calculated prices for the services and advised the Committee of them. By notice to the Marine Corps of February 7, 1986, the services at Quantico were added to the Committee's procurement list for 1986, and assigned to Rappahannock. Attached to the notice was a reproduction of the solicitation's schedule with unit, extended, and total prices entered. The total for all six line items was \$2,584,809.

On February 11, the Navy determined that setting aside the contract for Rappahannock would cost \$439,538 more than in-house performance over the 3-year contract period. The Navy's determination was based on a comparison of Rappahannock's proposed price with the Navy's cost estimate for in-house performance, using the cost comparison procedures set out in OMB circular A-76. Rappahannock appealed the results of the cost comparison to the Marine Corps Commercial Activities Review Board, mainly asserting that an accurate cost analysis was not possible from the information

contained in the solicitation, and that Rappahannock therefore had to rely on supplemental information supplied in map form by the Navy Department of Public Works to compute the square footage of the buildings to be serviced. Rappahannock complained that the Navy, however, did not base its calculations on that same information, which Rappahannock discovered had been in error. The Board denied Rappahannock's appeal, asserting that an independent recalculation had validated the Navy's calculations and cost estimate, and that Rappahannock had acted at its own risk in relying on information other than that in the solicitation.

Rappahannock subsequently filed a protest with our Office, mainly reasserting the contentions it raised before the Marine Corps Commercial Activities Review Board.

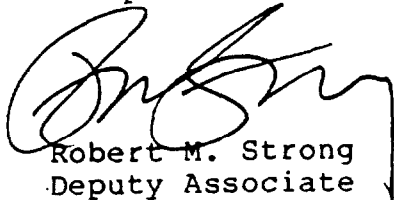
We will not consider the merits of the protest. The Wagner-O'Day Act provides at 41 U.S.C. § 48:

"If any entity of the Government intends to procure any commodity or services on the procurement list, that entity shall . . . procure such commodity or service from a qualified nonprofit agency for the blind or such an agency for other severely handicapped"

We think that language reasonably can be read only to require a procurement from the list in lieu of a procurement from another source. See Kings Point Mfg. Co., Inc., B-185802, et al., Mar. 11, 1977, 77-1 C.P.D. ¶ 184. We do not believe the language requires an executive agency to relinquish its fundamental discretion to decide whether to perform a contract in-house and instead to procure a service the agency has decided it does not want to buy. That is especially the case, in our view, where as here, the service is offered to the Committee for inclusion on its procurement list with the understanding that the decision to contract depends on the Committee's ability to offer a price less than the in-house cost.

Rappahannock's entitlement to a contract from the Navy is dependent on the Wagner-O'Day Act and, as stated above, the Act does not require the Navy to issue the firm a contract in any circumstances, so long as the Navy is not purchasing the services elsewhere instead. Consequently, our Office would have no legal basis on which to compel an award to Rappahannock no matter what the merits of the protest and, therefore, no useful purpose would be served by our review of the matters Rappahannock raises.

The protest is dismissed.



Robert M. Strong
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General Counsel